

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-758

May 14, 2001

PUBLIC UTILITIES COMMISSION
Investigation into Use of Central Office
Codes (NXXs) by New England Fiber
Communications, LLC d/b/a Brooks Fiber

ORDER ALLOWING
FURTHER PROVISION
OF GRANDFATHERED
RX SERVICE

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order we permit New England Fiber Communications, LLC d/b/a Brooks Fiber (Brooks) to continue to provide the RX service the Commission has permitted it to provide on a limited, grandfathered basis for its remaining customers.¹ Brooks may provide the grandfathered service to Internet Maine until September 15, 2001 and to PowerLink until November 1, 2001. Brooks may provide service to three other customers (CC Net, Commtel Internet and Interrealty) until August 31, 2000, provided that it provides notice to those customers as described below.

In our prior orders we have found that Brooks had offered an "FX-like" service on an unauthorized basis, but we also required it to file rates, terms and conditions for that service (labeled "RX") service on a grandfathered basis for those customers who were subscribers at the time of the Commission's findings and Order No. 4, issued on May 26, 2000 and June 30, 2000. The six customers named above are customers of the grandfathered service.

In our Order on Reconsideration in this docket, issued on November 14, 2000, pursuant to comments filed by RCN and Javanet, Inc., we decided to allow Brooks to continue the grandfathered service for six months, i.e., until May 14, 2001.

We allow the extensions for Internet Maine and PowerLink based on information gathered by the Commission Staff in conversations with Verizon, Brooks, and Prexar (the owner of Internet Maine and PowerLink, both of which it has recently purchased). It appears that the primary delay in implementing the transfers of service from Brooks to Verizon's new PRI Hub (500) service is the need for Prexar and Verizon to determine the number and locations of PRIs that will be needed. In addition to planning and implementing the changes in service for Internet Maine and PowerLink, Prexar is also engaged in transferring customers from previous Verizon services to the 500 service.

¹In an order in this docket issued on May 7, 2001, the Commission allowed extensions of time for two other Brooks customers, GWI and RCN.

Extensions for the other three customers are based on somewhat different circumstances. On prior occasions Brooks had informed the Commission Staff that it had provided notice to all of its customers of the grandfathered service that the service would be terminated on May 14, 2001. Brooks was also aware that GWI, another Brooks Customer, had filed a motion with the Commission in this case asking that Brooks be permitted to provide the grandfathered service for an additional amount of time. Brooks was further aware that, through conferring with GWI, Brooks and Verizon, the Staff was attempting to determine the appropriate length of any extension for GWI and, subsequently, for RCN (which had not filed a motion.) That process culminated in an order issued on May 7, 2001, that allowed Brooks to serve GWI until July 30, 2001 and RCN until September 30, 2001.

On Thursday, May 10, 2001, Brooks informed the Staff that terminating the remaining customers would cause those customers substantial inconvenience. Brooks stated that it had assumed that any extension that was ordered for GWI would apply to the grandfathered service as a whole (i.e., for all of its grandfathered customers) and would not be ordered on a customer-specific basis. Apparently, information based on this assumption was passed on by Brooks or WorldCom personnel to the other grandfathered customers.

It appears, therefore, that the other grandfathered customers may have relied on this information and believed that their service would not be terminated on May 14, 2001, although there is no particular reason to believe that they would have understood that any extension would have been longer than that ordered for GWI, which is the only grandfathered customer of Brooks that filed a formal motion with the Commission. The length of that extension was uncertain until May 7, 2001 (seven days before the date Brooks had been ordered to terminate the service); ultimately, the extension ordered for GWI was until July 30, 2001.

Under the circumstances, we find that it is reasonable to permit Brooks to provide the grandfathered service to the remaining three customers until August 31, 2001. Brooks shall provide written notice to those customers as described below in Ordering Paragraph 2.

Accordingly, we

ORDER

1. That New England Fiber Communications, LLC d/b/a Brooks Fiber (Brooks) may provide grandfathered RX service to Internet Maine until September 17, 2001 and to PowerLink until November 1, 2001.
2. That New England Fiber Communications, LLC d/b/a Brooks Fiber (Brooks) may provide grandfathered RX service to CC Net, CommTel Internet and Interrealty until August 31, 2000, provided that Brooks, within 10 days following this Order, shall provide written notice to each of those customers that the grandfathered RX

service will terminate on that date and the customers should make other arrangements for substitute service after that date. Brooks shall file copies of those notices with the Commission.

Dated at Augusta, Maine, this 14th day of May, 2001.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Nugent
 Diamond

COMMISSIONER ABSENT: Welch

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.